

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16696
[REDACTED])	
Petitioner.)	DECISION
)	
)	

On March 1, 2002 the Sales Tax Audit Bureau of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer). The Notice proposed additional sales tax, penalty and interest in the total amount of \$9,151 for the periods July 1, 1999 through June 30, 2002. The taxpayer filed a timely appeal and petition for redetermination on April 7, 2002. An informal conference by telephone was requested and held on November 1, 2002.

The audit deficiency is for amusement device decals that the taxpayer failed to purchase for machines he had in service over a three-year period.

DISCUSSION OF FACTS AND CONCLUSIONS

The Idaho Sales Tax Act requires owners or lessees of amusement devices to buy and affix decals in lieu of remitting sales tax from each machine's proceeds.

Amusement devices. -- (a) For purposes of this section the term "amusement device" shall mean all coin, currency, or token operated machines and devices which are used for amusement including, but not limited to, game machines, pool tables, juke boxes, electronic games and similar devices.

(b) In lieu of the imposition of sales tax upon the use of the amusement device, the owner or lessee or person having the right to impose a charge for use of the amusement device must pay an annual permit fee of thirty-five dollars (\$35.00) for each such device.

(c) Upon payment of the permit fees, the state tax commission shall issue the permit(s) to the owner or lessee or person having the right to impose a charge for use of the amusement device. Such permit fee may be increased in a proportionate amount by the commission if the state sales tax rate increases.

(d) All applications for a permit renewal must be made to the state tax commission on or before July 1 of each year. Such application shall contain the same information required on an application to secure a seller's permit under this chapter and shall be accompanied by the annual permit fee due for each device.

(e) The state tax commission shall adopt a uniform system of providing, affixing and displaying official decals, labels or other official indicia evidencing that the owner, lessee, or person having the right to impose a charge for the use of the amusement device has paid the annual permit fee for such amusement device. No person subject to a permit fee under this chapter may impose a charge or collect any consideration for use of such amusement device unless such official decal, label, or other official indicia, as required herein, is affixed to such amusement device. (Idaho Code § 63-3623B)

Commission records show that prior to July 1999 the taxpayer bought decals. The taxpayer did not purchase decals for the periods 7/1/1999-6/30/2000, 7/1/00-6/30/2001 and 7/1/2001-6/30/2002. The taxpayer did not provide the auditors with machine location or receipt records but did provide a verbal accounting of where the machines were located. The auditors visited some of the locations, phoned and sent letters to others inquiring as to what machines were there and how long they had been there. On the basis of this information, a tax deficiency amount was estimated.

In his written and verbal communication with the Commission, the taxpayer contended that he had fewer machines in service than stated in the audit report. The taxpayer said he was away from his home (i.e., the town where his business is located) from March 1999 through September 2002 for a major organ transplant and that his business declined as a result. He was asked to produce documents that would corroborate his long-term absence. A signed letter from a transplant coordinator stated the taxpayer did have a transplant in late March 1999 and that he had to remain either at the hospital or in the immediate area for one month. Routine follow up and complications required the taxpayer to be at the hospital from June to August of 1999. Three more visits were required in February 2000, February 2002 and November 2002. The length of these required stays was not provided.

The Commission accepts that the taxpayer was away from his hometown for medical care several times during the 3½ year period, and it asked for documentation corroborating that he was away from his business location for the entire period. The Commission asked for the taxpayer to provide signed statements from acquaintances of the taxpayer's choosing and from the town's postmaster, but these statements were not provided.

The Commission used the taxpayer's decal purchase information for 1996 through 1998 and gross revenue for amusement devices reported by the taxpayer on his individual income tax returns (Schedule C) during those years to determine average revenue per machine. These calculations are shown in the following table.

Tax Year (Calendar)	Gross Revenue Per Schedule C	Decals Purchased	Average Revenue Per Machine
1996	62,259	52	
1997	73,028	50	
1998	<u>66,546</u>	<u>41</u>	
Total	201,833	143	<u>1,411</u>

The gross revenue reported on the taxpayer's individual income tax returns (Schedule C) for each year under audit was divided by the average revenue per machine shown above to estimate the number of machines that were in operation.

Tax Year (Calendar)	Gross Revenue Per Schedule C	Average Revenue Per Machine	Estimated Decals Required
1999	51,111	1,411	36
2000	41,703	1,411	30
2001	35,313	1,411	<u>25</u>
		Total	91

Each of the 91 decals is assessed a cost of \$35 per Idaho Code § 63-3623B(b), for a total tax of \$3,185.

In sum, the Commission relies here on reported revenue and past experience to derive a deficiency in the absence of detailed accounting records. The taxpayer has not provided the Commission with information to establish that the amount asserted in the Notice of Deficiency Determination is incorrect. As a result, the Commission will uphold the tax deficiency notice, as adjusted, for the period July 1, 1999 through June 30, 2002. A determination of the State Tax Commission is presumed to be correct. *Albertson's, Inc. v. State, Dept. of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). A State Tax Commission deficiency is presumed to be correct and the burden is on the taxpayer to show that the deficiency is erroneous. *Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986).

The Idaho Sales Tax Act provides for the assessment of a penalty against those who fail to pay timely for amusement device decals.

(f) In addition to the penalties set forth above and in section 63-3634, Idaho Code, the state tax commission may assess the following penalties:

(1) If any owner, lessee, or person having the right to impose a charge for the use of any coin, currency or token operated amusement device in this state shall violate any provision of this section or any rule promulgated under this section, the commission may assess penalties, of fifty dollars (\$50.00) for each device for failure to pay timely permit sticker fees. (Idaho Code § 63-3623B)

Based on the code section cited above, a penalty of \$4,550 could be imposed (91 decals X \$50/decals). The Commission exercised its discretion to reduce that penalty by half to \$2,275 (Idaho Code §63-3046). Interest was added to the tax owed as provided in Idaho Code §63-3045 and is updated to the present. The amount owed is reduced by payments made by the taxpayer following the issuance of the Notice of Deficiency Determination.

WHEREFORE, the Notice of Deficiency Determination dated March 1, 2002, is hereby
MODIFIED, and, as so modified, is APPROVED, AFFIRMED and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty
and interest:

	TAX	PENALTY	INTEREST	TOTAL
Interest to 1/15/03	3,185	2,275	623	\$6,083
Less 1/15/03 Payment			(500)	(500)
Add Interest 1/16/03 - 2/18/03			14	14
Less 2/18/03 Payment	(308)		(137)	(445)
Add Interest to 7/17/2003			58	<u>58</u>
Total Due	2,877	2,275	58	<u>\$5,210</u>

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2003, a copy of the within and
foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an
envelope addressed to:

[Redacted]